

# Joint Legislative Oversight Committee on Health and Human Services

State Contracting Process Presentation  
Sherri Garte, Deputy State Purchasing Officer  
NC Division of Purchase and Contract  
September 9, 2014

# Sole Source Contract Definition

- NC Administrative Code Title 1, Chapter 5 provides conditions under which competition may be waived including:
  - **where performance or price competition is not available;**
  - **where a needed product or service is available from only one source of supply;**
  - **where emergency action is indicated;**
  - where competition has been solicited but no satisfactory offers received;
  - **where standardization or compatibility is the overriding consideration;**
  - where a donation predicates the source of supply;
  - **where personal or particular professional services are required;**
  - where a particular medical product or service, or prosthetic appliance is needed;
  - where a product or service is needed for the blind or severely disabled and there are overriding considerations for its use;
  - **where additional products or services are needed to complete an ongoing job or task;**
  - where products are bought for "over the counter" resale;
  - where a particular product or service is desired for educational, training, experimental, developmental or research work;
  - where equipment is already installed, connected and in service, and it is determined advantageous to purchase it;
  - where items are subject to rapid price fluctuation or immediate acceptance;
  - where there is evidence of resale price maintenance or other control of prices, lawful or unlawful, or collusion on the part of companies which thwarts normal competitive procedures;
  - where the amount of the purchase is too small to justify soliciting competition or where a purchase is being made and a satisfactory price is available from a previous contract;
  - where the requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s);
  - and where a used item(s) is available on short notice and subject to prior sale.

# Approval and Documentation for Waiver of Competition

- Although competition may be waived, its use is required wherever practicable. Where waiver is contemplated, agencies may negotiate with a potential vendor(s) in an effort to acquire the quality of commodity, service or printing needed at the best possible price, delivery, terms and conditions, when the expenditure is less than their respective benchmark or delegation. A solicitation document requesting or inviting an offer(s) shall be issued by the agency, including standard language, terms and conditions issued by the Division of Purchase & Contract.
- Any waiver of competition for the purchase, rental, or lease of goods and services is subject to prior review by P&C if the expenditure exceeds ten thousand dollars (\$10,000).

# Personal Services Contract Definition

- personal services provided by a professional individual (person) on a temporary or occasional basis, including (by way of illustration, not limitation) those provided by a doctor, dentist, attorney, architect, professional engineer, scientist or performer of the fine arts and similar professions; the exemption applies only if the individual is using his/her professional skills to perform a professional task; a personal service may also be a consulting service;

# Criteria for Determining Appropriate Use of a Sole Source or Personal Services Contract

- A determination that competition will not enhance the price that the State would receive for the product or service;
- A determination that competition will not enhance the quality of the product or service that the State would receive;
- A determination that an individual or vendor is uniquely qualified;
- A determination that the services required cannot be performed by State Employees;
- Due to the nature of a personal services contract, it may not be practicable to solicit competition. For example, if the services of a particular individual are need to provide subject matter expert testimony in a court case, soliciting competition may not be practicable given time constraints, availability, etc. Determining whether a waiver of competition is appropriate for a personal service should be based on the definition in 01 NCAC 05B .1601 (10): if the person is using his/her professional skills and if the services are provided on a temporary or occasional basis. Otherwise, competition should be sought.
- Depending on the agencies need for a person to provide services, and what the scope of services is, it may be difficult to advertise via existing procurement channels which are geared more toward the acquisition of goods and services not human resources.

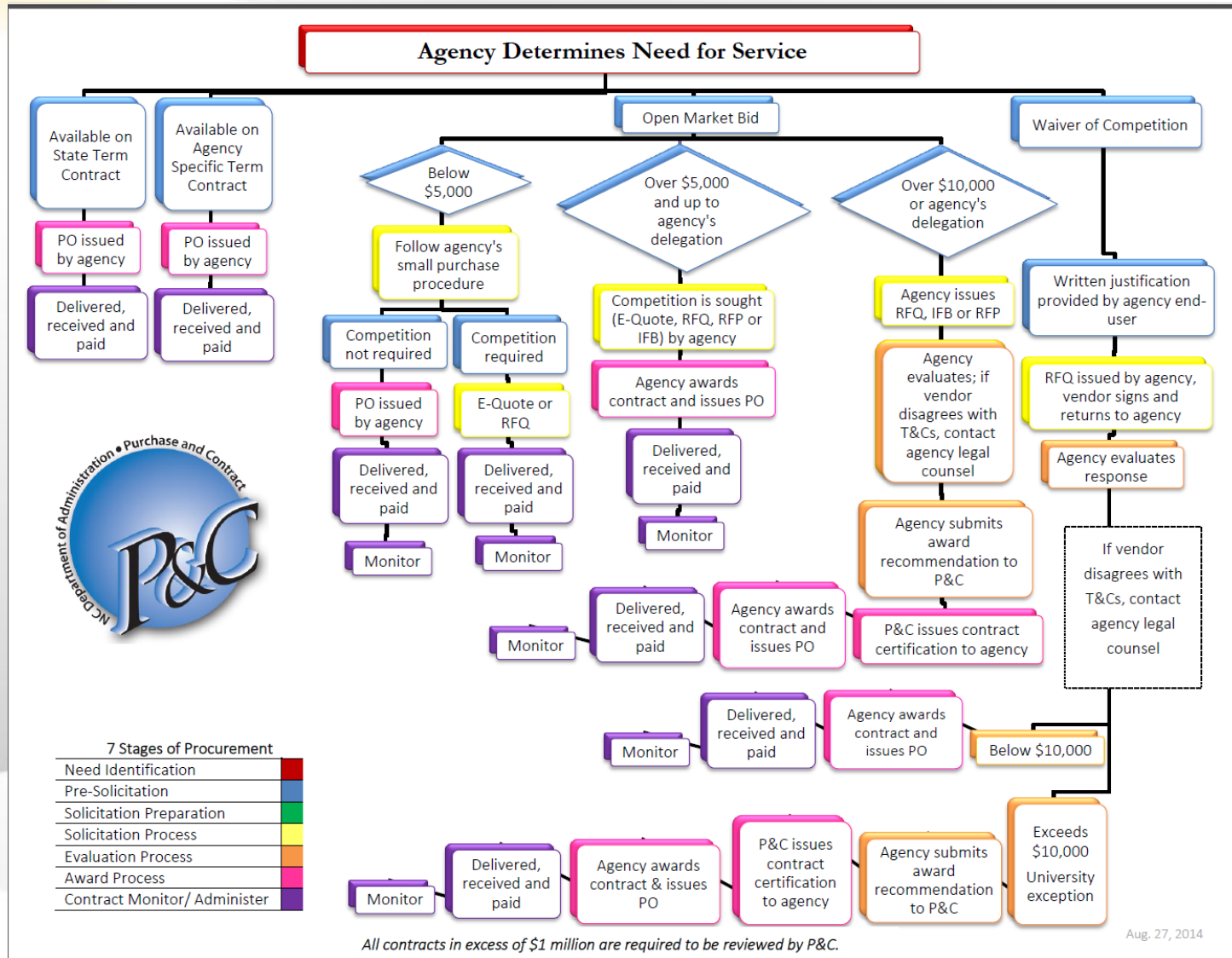
# Advantages/Disadvantages

- Competition should be sought wherever practicable;
- Difficult to determine whether other sources are available or whether the individual or firm is uniquely qualified;
- Potentially higher costs due to lack of competition;
- Lack of scope definition and deliverables;
- Scope changes and increases in time to complete assigned tasks;
- Often time and materials basis versus deliverables based; Is the State getting what it is paying for?

# Funding Sources

- Statutes, Rules, Policies and Procedures are the same regardless of source of funds;
- In some (not many) instances grants may specify products or services to be used and/or source of supply for products or services;

# Procurement Process

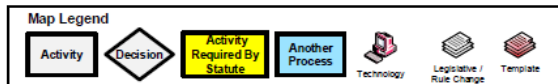
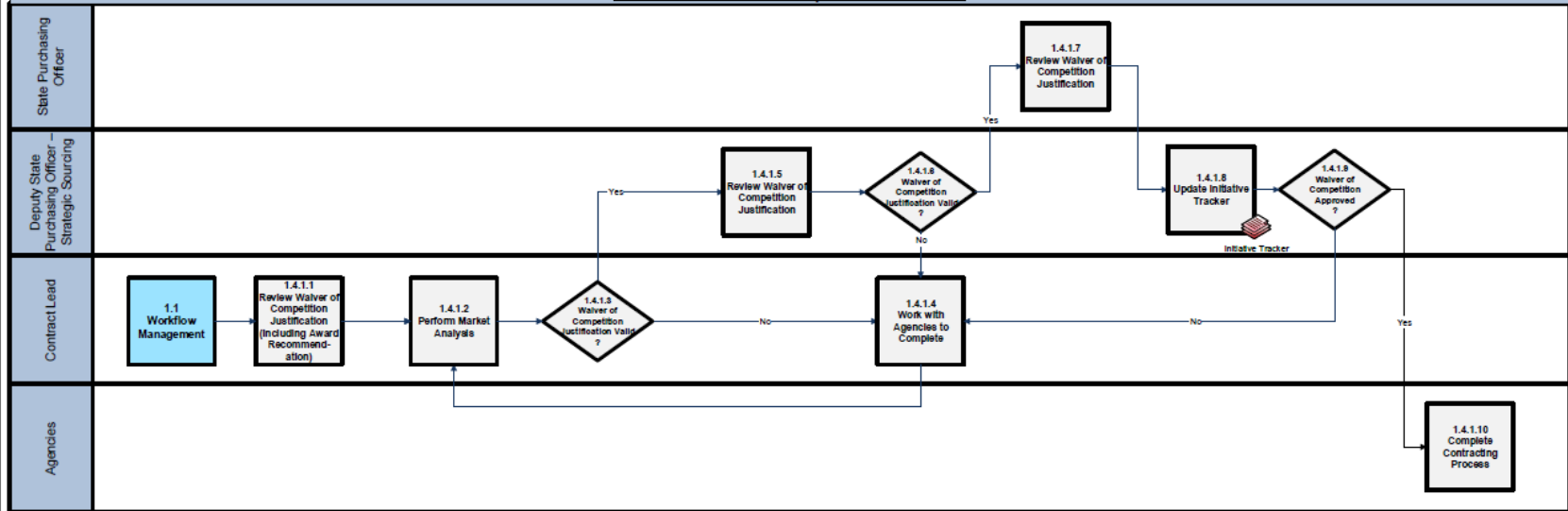




# Draft Waiver of Competition Process

## P&C – 1.4 Waiver of Competition (DRAFT)

### 1.4.1 Review Waiver of Competition Justification



# Approvals and Dollar Limits

- For Waiver of Competition, within Agency Delegation (typically \$25,000), but less than \$10,000, Agency Head, Purchasing Officer or designee approves;
- For Waiver of Competition, above \$10,000, State Purchasing Officer approves;
- Personal Service Contracts are exempt from P&C approval and Agency policies determine the approval authority;
- Contract Amendments must be approved by P&C in advance for all contracts that exceed the Agency delegation;
- There are no dollar limits for sole source or personal service contracts;
- For services, per 01 NCAC 05B .0301, 4 (a) The date(s) of service (The contract shall not be for more than three years including extensions and renewals, without the prior approval of the SPO for unusual requirements);

# Other Issues and Questions